Supreme Court of the United States

OCTOBER TERM, 1970

HALL H. BAREFOOT, et al
Petitioners

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN & HELPHERS OF AMERICA, et al
Respondent

No. 658

BRIEF OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS IN OPPOSITION

Opinions Below

The District Court issued no opinion. Its findings of fact and conclusions appearing as Appendix B to the Petition, are unreported.

Chief Judge Lewis' Opinion for the Court of Appeals for the Tenth Circuit is reported at 424 F. 2d 1001.

Jurisdiction

The jurisdictional requisites are adequately set forth in the petition at Page 1.

Question Presented

To sustain venue-jurisdiction of a labor organization under 29 U.S.C. §185(c) must it appear that duly authorized officers or agents of the labor organization were actually physically present in the District?

Statute Involved

29 U.S.C. §185(c) provides:

> "(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members."

Statement

Petitioner asserts "facts" not found below. The statement at petition 3-9 is inaccurate and includes assertions neither supported by the record nor found below. Accordingly, we restate the case.

Truck drivers employed by Transcon at Oklahoma City sued under 29 U.S.C. §185 in the Western District of Oklahoma, seeking money damages from their employer, their local union and the International Union by which the local is chartered.

The complaint seeks actual and exemplary damages, on allegations that plaintiffs were discharged in violation of a collective bargaining agreement,

and that the unions, both Local and International, breached the duty of fair representation owed to plaintiffs who were union members.

More specifically, it is alleged that plaintiffs requested the defendant Local to institute appropriate proceedings to secure correction of working conditions of which plaintiffs complained; that Transcon failed to correct the adverse working conditions; that plaintiffs were thereupon advised by the president and vice-president of Local to strike; that Local authorized and encouraged the work stoppage, and advised plaintiffs to ignore Transcon's demands that they return to work; that a strike resulted involving approximately 1,000 employees, that the '"officers of the local union from time to time officially directed the strikers to return to work, while at the same time privately urging them to continue to strike"; that Transcon discharged plaintiffs for engaging in the strike; that the discharge was pursuant to an agreement between Transcon and the Unions to deprive plaintiffs of their employment; that Unions failed to fairly and adequately represent plaintiffs in their grievances challenging the discharges; that as a result the arbitral body denied the grievances; the unions failed to press for plaintiffs' reinstatement; consequently, plaintiffs have lost their jobs and each has been damaged to the extent of $150,000 actual, plus a like amount punitive damages for each of nineteen plaintiffs, i.e. the total claim is for six million dollars.

Federal jurisdiction is alleged under 29 U.S.C. §185.

The complaint does not allege that defendant International either maintained its principal office or had duly authorized officers or agents engaged in representing or acting for employee members in the Western District of Oklahoma.

The Motion to Dismiss

International filed Sworn Motion to Dismiss, asserting:

> "This defendant maintains neither offices or places of business within the Western District of Oklahoma, nor does it have duly authorized officers or agents engaged in representing or acting for employee members in the Western District of Oklahoma."

The supporting affidavit spelled out the separate identity and autonomy of Local 886, as a self-governing body, whose officials are elected and compensated by the local union membership, and are authorized to act only on behalf of the Local.

After considering affidavits and holding an evidentiary hearing the District Court made Fact findings (Petition, Appendix, pp. IX-XIII) including the finding that the International had neither representatives nor employees in the Western District of Oklahoma, but asserted venue jurisdiction on the theory that the president of the autonomous

Local union was resident of the district, and he had consulted with International agents outside the district.

The Court of Appeals recognizing the autonomous nature of the Local Union, held there was no evidence that the local union president had either apparent or actual authority to represent the International.

Since the defendant International had neither office nor agents in the District the Court of Appeals determined it could not be held for suit there.

ARGUMENT

The question sought to be presented is narrow and factual. It was determined below in accordance with the special statutory treatment of this type of case, and consistently with the few other courts which have considered the issue. See *Dixie Carriers v. N.M.U.*, 35 F.R.D. 365; *St. Clair v. International Brotherhood of Teamsters,* ..... F. Supp. .....; 57 CCH Labor Cases 21,270, ¶12,585; Cf. *International Union of Operating Engineers v. Metropolitan, etc.*, 400 F. 2d 261.

Alleged Conflict

Petitioners' attempt to find conflict with this Court's *Denver & Rio Grande* (387 U:S. 556), and *International Brotherhood v. U. S.* (275 F. 2d 610, C.A. 4) will not do.

The former involved an entirely different statute which prescribed venue on the basis of where defendant was "doing business." The statute in the instant case casts venue-jurisdiction where a labor organization has its "principal office" or where "its duly authorized officers or agents are engaged in representing or acting for employee members."

Nor is there conflict with the Fourth Circuit's *International Brotherhood* case. Though each concerned a Teamsters local, the instant case involves an autonomous local which elects its own officers and runs its own business; while in the Fourth Circuit's case the local had been placed in trusteeship and, as found below, "therefore under the direct and immediate control of International," 424 F. 2d at 1004.

The assertion that this decision is in conflict with the Tenth Circuit's decision in *International v. Metropolitan,* 400 F. 2d 261, is frivolous. Chief Judge Lewis wrote both opinions. In the instant case he details the distinction between them.[1]

[1] See 424 F. 2d at 1005, headnotes 6-8:

"In *Metropolitan* we stated that the pivotal consideration in resolving the question of venue-jurisdiction under section 185(c) was 'the actual fact of

(*Footnote continued on next page*)

Alleged Importance of Issue

Petitioners' assertion that it is important as a policy matter that an International Union be subject to suit in any district in which it has members or in which a Local Union functions—would make Internationals subject to suit in every district in the nation. It would overturn the long-standing rule which recognizes that International and Local are separate entities;[2] and would, as the court be-

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union activity in a given area by a bona fide union representative as opposed to the fact of his being authorized or unauthorized to do a particular act.' 400 F. 2d 263, 264. Possibly in light of this statement, the district court considered the degree of influence which International officials apparently exercised over Pannell in the transaction of events under examination, indicating that the creation of ascertainable effect within a given area, even in the absence of the physical presence of a duly authorized agent, was a satisfactory basis for venue. However, the kind of pragmatic analysis contemplated in *Metropolitan* presupposes physical presence of a bona fide representative within the district. Once a national labor organization has manifested its presence in a local labor dispute for the purpose of influencing or dictating union policy, assertion of venue over that organization is clearly contemplated by section 185(c) and cannot be evaded by reliance upon internal rules limiting the agent's authority. Conversely, when, as in the instant case, a labor organization's role in a dispute has been responsive rather than affirmative and conducted outside of the district, then its liability to suit in that district is clearly not contemplated by section 185(c). As a national supervisory organization, it is inevitable that the enunciations of policy, advice and instructions given by International to local affiliates will, when implemented, have an effect on local labor disputes. However, such an effect cannot be equated with the representing or acting for employee members by a duly authorized agent within the district, the criteria established by section 185(c)."

[2] The separate identity and autonomy of Local and International is implicit in the Federal Labor Legislation, (Cf. Landrum-Griffin, 29 U.S.C. §461ff.; 481ff.), and has often been held by the courts and the Labor Board.

United Mine Workers v. Gibbs, 383 U.S. 715, 16 L.Ed.2d 218 (1966); see *Coronado Co. v. United Mine Workers*, 268 U.S. 295, 299; *United Mine Workers v. Coronado Co.*, 259 U.S. 344, 393; *United Construction Workers v. Haislip Baking Company*, 223 F.2d 872 (C.A. 4), cert. denied 350 U.S. 847; *Di Georgio Fruit Corporation v. NLRB*, 191 F.2d 642 (C.A.D.C.); *Pennsylvania Mining Co. v. United Mine Workers*, 28 F.2d 851 (C.A. 8), cert. denied 279 U.S. 841; *Mile Branch Coal Co. v. United Mine Workers* (D.C.D.C.), 42 LRRM 2169 (May 20, 1958); *Axel Newman Co. v. Sheet Metal Workers* (D.C. Minn.), 37 LRRM 2038 (Oct. 21, 1955); *Adamson v. United Mine Workers*, 3 Utah 2d

(*Footnote continued on next page*)

low notes,[3] do violence to the statutory language.

Congress chose not to broaden venue-jurisdiction under this statute as to International unions beyond the area in which their responsible representatives are actually functioning in representation of employee members. As the Court below held in *Metropolitan,* Congress was concerned about "the actual fact of union activity in a given area by a bona fide union representative," 400 F. 2d at 263.

There are impressive policy reasons for limiting venue-jurisdiction in the limited types of cases authorized by this statute to the areas which the statutory language specifies. But in any event these policy considerations are for the Congress, not this Court.

Accordingly, we respectfully request that certiorari be denied.

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377, 277 P.2d 922, *Ford v. United Brotherhood of Carpenters,* 315 P.2d 299 (Wash); *Harker v. McKissock,* 7 N.J. 323, 81 A.2d 480; *Demaio v. Local 80-A, United Packinghouse Workers,* 29 N.J. Super, 341, 102 A.2d 480; *Seidner v. Fish,* 131 Misc. 203, 226 N.Y.S. 411.

See also NLRB holding in *In re IBEW (Franklin Electric Construction Co.),* 121 NLRB 143, and cases cited therein, *Retail Clerks International,* 125 NLRB 984, 995; *United Mine Workers of America and District 30, United Mine Workers of America, and Local 9606, United Mine Workers of America (Blue Diamond Coal Co.),* 143 NLRB 795 at 797 (1963); *Morgan Driveaway, Inc. v. International Brotherhood of Teamsters,* 268 F.2d 871 (C.A. 7, 1959); *Local 1016 United Brotherhood v. NLRB (Booker Lumber Co.),* 273 F.2d 686 (C.A. 2, 1960); *United Brotherhood etc. et al v. NLRB (Endicott Church Furniture),* 286 F.2d 533, at 538, (C.A.D.C., 1960).

[3] "Section 185(c) itself, setting out the criteria for the assertion of venue jurisdiction over a labor organization, necessarily presupposes the autonomy of a national organization; to interpret the statute otherwise would negate the necessity of its existence." 424 F. 2d at 1004.

Respectfully submitted,

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